IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No. 6109 of 2007

Date of Decision: December 18, 2007

Sh.Ravidass Sabha, Safidon .....Petitioner

Versus

Avinash Chander and others .....Respondents

CORAM:- HON'BLE MR.JUSTICE S. D. ANAND

Present: Mr.Amit Rawal, Advocate with
Mr.KS Malik, Advocate for the petitioner.

S. D. ANAND, J.

1. On the own showing of the petitioner-objector, he has already filed a suit for permanent injunction "with regard to disputed land/property against the Decree-holders in the Hon'ble Court titled as Guru Ravidass Sabha V/s Avinash Chander etc. which is pending for 7.11.05 also and in that suit the Hon'ble court has already granted injunction order/stay order, as directing status-quo regarding the possession of the disputed property." The further averment in the grounds is that "the copy of order dated 30.9.2005 is enclosed herewith. Hence, in these circumstances till the disposal of the above suit of the applicant, the applicant cannot be dispossessed and warrant of possession already issued by the Hon'ble Court in above case cannot be effected."

2. Mr.Amit Rawal, learned counsel for the petitioner, argues that the orders passed by the Civil Court would not restrain the Executing Court

from proceeding with the execution proceedings. The further plea, in the context, is that the impugned decree had been obtained on the basis of a fraud.

3. The plea raised by the petitioner-objector is under adjudication in the Civil Court which has, on the own showing of the petitioner, granted a status quo order. It is further the own plea of the petitioner in the grounds that in the light of that order, he cannot be dispossessed and warrant of possession issued in respect of the property in dispute cannot be executed. The allegations pertaining to fraud require adjudication on the basis of substantive evidence adduced at the trial. It is for the petitioner to convince the Civil Court (seized of the suit filed by him) about the allegations of fraud and to request for the grant of whatever restraint order is deemed to be appropriate in the circumstances of the case. Things could possibly have been different if the petitioner had not taken re-course to an independent suit. Once the petitioner has opted to go in for an independent cause and has been able to obtain status quo order as well, he cannot be heard to assail the impugned order passed by the Executing Court which (order) does not suffer from any legal infirmity or perverse exercise of discretion. All that this order provides is that the petitioner-objection cannot resist the decree-holder in view of the fact that the parties to the main suit had conceded by exchanged possession of the disputed property.

4. Dismissed in limine.

(S. D. ANAND)
JUDGE

December 18, 2007
SRM

Note: Whether referred to reporter ? Yes/No